

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

LASERDYNAMICS \* Civil Docket No.  
VS. \* 2:06-CV-348  
\* Marshall, Texas  
\*  
\* July 6, 2009  
QUANTA, ET AL \* 8:30 A.M.

TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE T. JOHN WARD  
UNITED STATES DISTRICT JUDGE  
AND A JURY

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transcript produced on CAT system.)

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26 \* \* \* \* \*

27 P R O C E E D I N G S

28 COURT SECURITY OFFICER: All rise.

29 (Jury in.)

30 THE COURT: Please be seated.

31 Good morning, Ladies and Gentlemen.

32 Thank you very much for being here. I'm glad you  
33 brought the rain. At least we had a good rain at our  
34 house this morning.

1 Morning, Counsel.

2 All right. Ladies and Gentlemen, what  
3 we're going to do now we're going to hear final  
4 arguments from the parties, after which time I will give  
5 you the final instructions, and you will retire and  
6 deliberate your verdict.

7 And we will first hear this morning from  
8 the Plaintiff. Who's going to argue it?

9 MR. SANKEY: Your Honor, I will.

10 THE COURT: Mr. Sankey.

11 MR. SANKEY: Thank you, Judge Ward.

12 THE COURT: And I'll give you the

13 requested warnings.

14 MR.

14 MR. SANKEY: Thank you.

15 May it please the Court, counsel.

18 As I said in opening, this is an  
19 important case for Mr. Kamatani, and it's an important  
20 case for the patent system. The patent laws lay out  
21 what happens to infringers, but it's only jurors like  
22 yourself that can enforce the law.

23 As Judge Ward told you, your service as a  
24 juror is a high duty, second only to the men and women  
25 serving in our military. I agree with Judge Ward's

1 statement.

2 And on behalf of Mr. Kamatani and myself,  
3 we want to thank you for the honor and privilege of  
4 coming before you to seek justice.

5 At the end of this case, you're going to  
6 be asked four questions, and I want to tell you what  
7 those questions are one by one and walk you through the  
8 evidence that supports them.

9 The first question is going to be  
10 infringement and whether or not the Defendants infringe.  
11 We are the only side that presented evidence to you, and  
12 that was from Dr. Howe, that said that the Defendants'  
13 drives infringe, and he has no doubt that they do.

14 Dr. Howe has 40 years of experience  
15 designing optical disk drives. Dr. Howe did an  
16 infringement analysis on the MediaTek controller and the  
17 Philips controller. Those two controllers met every  
18 element of Claim 3 of the '981 patent.

19 The evidence is undisputed that the  
20 Defendants' drives at issue in this case have either a  
21 MediaTek or a Philips controller. That's one of the few  
22 things that the Defendants have been honest about in  
23 this case to you.

24 The scales on this issue -- the scales of  
25 justice are heavily weighted in favor of infringement.

1 When the Defendants put on their case, the scales never  
2 move. They don't put on any evidence, not a single  
3 piece of evidence, that suggests that they do not  
4 infringe.

5 Not one engineer from the company came  
6 and gave you any testimony. Don't you think if they  
7 could find someone to analyze their products and say  
8 they don't infringe that they would have called them as  
9 a witness, be it an expert or one of their inside  
10 engineers?

11 Of course, they would have. They didn't  
12 call that person because they don't exist.

13 Dr. MacFarlane, the one expert that they  
14 did call, the gentleman from Dallas, said that he never  
15 analyzed any of their drives and was specifically asked  
16 not to. All that they could do, the best defense they  
17 could put on was to try to pick on Dr. Howe, the  
18 gentleman from Arizona -- University of Arizona that has  
19 40 years designing drives.

20 I suspect when they give their closing  
21 that they're going to try to pick on some of Dr. Howe's  
22 testimony and take it out of context or pick on his  
23 methodology. His conclusion that they infringe was rock  
24 solid. No one ever told you anything different.

25 Dr. Howe told you the source code doesn't

1 have to be exact line by line. The product names or the  
2 part names for the products don't have to be called the  
3 same thing between different products. They just have  
4 to operate the same, and they do.

5 They infringe, and as he put it: I have  
6 no doubt.

7 On whether the Defendants induce or  
8 contribute to infringement, again, the evidence was  
9 overwhelming on the scales. First, they know about the  
10 patent no later than August 2006 when the lawsuit is  
11 filed. They never change the design or buy drives that  
12 operate differently.

13 They have a U.S. subsidiary with hundreds  
14 of employees to assist their customers when the drives  
15 stop working. They have an employee stationed with  
16 Gateway. They have an employee stationed with Dell.  
17 They have hubs in the United States that store the  
18 constant influx of more products.

19 They meet at least quarterly with all  
20 their customers in the United States. They participate  
21 in design review meetings, and they share product design  
22 documents. They present PowerPoints on how the drives  
23 are designed.

24 On contributory infringement, they put  
25 the drive into the computer, which is then shipped into

1 the United States for use by the end-user. It is that  
2 use by the end-user that constitutes direct  
3 infringement.

4 When a disk is put into a drive, direct  
5 infringement occurs. I guess that's a second thing that  
6 they don't dispute, that the end-user actually uses the  
7 drive.

8 I'm sure if they could have figured out a  
9 way to try to convince you that the drives are never  
10 used, they would have tried. Common sense tells us  
11 that's the reason the drive is in the computer, for the  
12 end-user to use it.

13 Question No. 1 will list the drives for  
14 you and ask whether or not they infringe. The answer is  
15 yes as to all of the accused drives in this case.  
16 Again, the scales are overwhelming; no evidence on the  
17 other side.

18 Question No. 2 that you will be asked is  
19 whether or not the Defendants presented clear and  
20 convincing evidence that the '981 patent is invalid.

21 Remember, that is the very high burden,  
22 clear and convincing. The Defendants actually presented  
23 no evidence. Dr. MacFarlane gave his opinion, but then  
24 he gave no facts to support it. All he said was that  
25 someone with as little experience as he had would find

1 it difficult to practice the patent.

2 Dr. Howe said: I've got 40 years of  
3 experience. It would be very easy for me to practice  
4 the patent.

5 When you hear the instruction from Judge  
6 Ward on enablement, you will see that it talks about one  
7 skilled in the art not having to use undue  
8 experimentation to practice the patent.

9 There's no evidence in the record about  
10 one having to use undue experimentation. This was their  
11 one defense to try to get out of the trap.

12 Remember, the United States government  
13 has now twice said Claim 3 is valid. 1996, 2008.  
14 The answer to Question No. 2 on whether or not they  
15 presented clear and convincing evidence that the patent  
16 is invalid is no.

17 The third question you're going to be  
18 asked is whether or not the Defendants' conduct was  
19 willful. The answer is yes. I don't know how it could  
20 have been any more willful.

21 Let's look at some of the facts. They  
22 knew about the patent.

23 They never get an opinion from an  
24 attorney as to whether or not they are infringing. They  
25 raise a defense of invalidity; then they never get an

1       opinion from an attorney as to whether the patent is  
2 invalid. It never was a serious defense, one they threw  
3 on the wall to see if it would stick.

4               They never use any alternative  
5 technologies, although Dr. MacFarlane says he believes  
6 some exist. The letters from Ms. Li to their customers  
7 requesting indemnification, extremely important.

8               They requested indemnification from  
9 Philips, Sony, NEC, Sony NEC Optiarc. And they also  
10 requested indemnification from QSI, a company that they  
11 own part of and the documents say they control.

12               Why are you requesting indemnification,  
13 unless you know what you're doing is wrong?

14               Once the lawsuit is filed, what happens  
15 to their U.S. sales?

16               They increase. They acted with reckless  
17 disregard. That's one of the tests and one of the  
18 instructions that Judge Ward will give you, when you're  
19 looking at willfulness, is whether they acted with  
20 reckless disregard.

21               And what was their excuse for acting with  
22 reckless disregard?

23               Mr. Cheng said: Philips told us to keep  
24 doing what we're doing; keep selling; they'll take care  
25 of it. Maybe Philips or Sony or one of these companies

1 will reimburse them for the damages in this case, but  
2 we're here to assess damages against these Defendants  
3 for their infringement.

4 Another element of willfulness is whether  
5 they tried to cover up their infringement. They spent  
6 the entire week last week trying to tell you that QSI  
7 and QCI are separate companies that have no  
8 relationship.

15 How many times did the Defendants lie to  
16 you in this case or try to tell you something that they  
17 didn't have any single document to support?

18 There is clear and convincing evidence  
19 that their conduct was willful. And when you're asked  
20 that question on No. 3, again, the scales are lopsided.  
21 They have no evidence that their conduct was not  
22 willful, and the answer to Question No. 3 is yes.

23 The last question you will be answered --  
24 that you will answer in this case will be damages. I  
25 told you in the beginning that the timeline would be

1 critical, and it is.

2 I also told you that the Defendants will  
3 spend the entire trial talking about the 1997/2001  
4 timeframe, and they did.

5 Let's put the timeline back up.

6 The problem is, you heard the dramatic  
7 changes that the optical disk drive market went through  
8 after 2001. Their own expert, Mr. Reed, agreed that the  
9 changes in the market were dramatic. The timeline in  
10 you making your decision is critical, because the  
11 instructions that Judge Ward is going to give you, after  
12 closing argument, will tell you to determine what a  
13 reasonable royalty is as of August 31, 2006, the red  
14 line.

15 Any date before that, what's going on in  
16 1997/1998 time period is not relevant to you making that  
17 decision. All these agreements in the '98/'99 timeframe  
18 mean nothing when you're considering what was going on  
19 in the market in 2006.

20 Why do the Defendants talk about them  
21 every chance they got?

22 And I bet they're going to talk about  
23 those same agreements over here in their closing  
24 argument. I told you why they were going to do that in  
25 opening statement. It's an effort to get you to let

1 them off cheap for their infringement. Don't buy into  
2 that.

3 QCI is the largest laptop manufacturer in  
4 the world, 2.6 billion dollars' worth of sales into the  
5 United States since this lawsuit started. The damages  
6 testified to by Mr. Murtha and Mr. Davis is 2 percent of  
7 what they sold into the United States since this lawsuit  
8 started.

9 Were the Defendants even honest with you  
10 in talking about damages?

11 Of course, they weren't. They said we

12 [REDACTED] **REDACTED BY ORDER OF THE COURT** [REDACTED]  
13 have a single document to verify that. Come on. This  
14 is a publicly traded company in Taiwan.

15 Then they said the Plaintiff wants a  
16 50-percent royalty, because \$14 over \$28, the cost of  
17 the drive, is 50 percent. I guess they forgot that they  
18 sell the computer with the drive in it for \$875.

19 The royalty rate is 2 percent of what  
20 they've sold since this lawsuit has been filed in the  
21 United States.

22 Now, let's focus on the timeline during  
23 the relevant time period that you will be asked by Judge

24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 **REDACTED BY ORDER OF THE COURT**  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 amount of money that they could make selling this  
10 product into the United States, substantially higher  
11 than the amount they were willing to pay.

12 Mr. Reed, who told you that his client  
13 should only have to pay 500,000 in damages, admitted  
14 that he focused on this time period here (indicates).  
15 Maybe they could have gotten a license in 2000 or 2001,  
16 but they chose not to.

17 They chose voluntarily to infringe. They  
18 chose to take the chance that an individual, like Mr.  
19 Kamatani, would not have the wherewithal to sue them,  
20 would not drag them kicking and screaming to a federal  
21 court in the Eastern District of Texas, and ask 10  
22 citizens of the United States to enforce the patent laws  
23 and to award damages for their conduct.

24 The numbers they are facing are a direct  
25 result of their own wrongful conduct. Mr. Davis, who

1 had the damage model for you, says that 2 percent of  
2 their sales, since this lawsuit has been filed, is  
3 \$52,070,154. It is the only number you have evidence  
4 of, of what was relevant during the 2006 time period  
5 that you will be asked to award damages on.

6                   Their own expert, Mr. Reed, said: I  
7 think Mr. Davis did a fine job in calculating his  
8 numbers. He was correct as to the royalty base, and he  
9 applied Mr. Murtha's royalty rate to come up with the  
10 damage number.

11                   Focus on, as you were told at the  
12 beginning of this case by Judge Ward, the credibility of  
13 the witnesses, because it's very important in a lawsuit.  
14 The witnesses take an oath to tell the truth.

15                   You heard testimony from the Defendants  
16 that was exactly opposite of what their documents said.  
17 You saw inaccurate spreadsheets that they gave us during  
18 discovery that lied about who was manufacturing the  
19 drives. And then you saw them take a position that they  
20 had taken throughout this lawsuit and change that  
21 position about how they obtained the drives.

22                   The last question you will be asked is  
23 what sum of money would fairly and reasonably compensate  
24 LaserDynamics for the infringement that you have found.

25                   Remember, when they changed their

1 position in trial about how they obtained their drives,  
2 they received -- you received an instruction from Judge  
3 Ward as follows:

4                   Prior to yesterday, the position of  
5 Quanta Computer was that this buy/sell arrangement  
6 generally was one of the ways in which they accomplished  
7 their -- or the way they did their business. Yesterday,  
8 the testimony was, for the first time, that that was the  
9 predominant method of doing business.

10                  You are instructed that this constitutes  
11 a significant change in the testimony, and no documents  
12 have been produced that support that and that you may  
13 take this instruction into account in judging the  
14 credibility of all of this witness' testimony and all  
15 other Quanta Computer's positions in this case.

16                  THE COURT: You've used 18 minutes.

17                  MR. SANKEY: Thank you, Judge.

18                  The Defendants were not honest to you  
19 from the beginning of this case to the end of this case.  
20 And you have to ask yourself why. What are they hiding?  
21 What are they trying to get out of?

22                  I'm going to sit down now, and let  
23 Mr. Parker give you his closing, and then I'll get to  
24 come back up and talk to you for a few more minutes  
25 before you start your deliberations.

1                   Maybe Mr. Parker can explain to you why  
2 his clients chose not to tell the truth throughout this  
3 trial.

4                   Thank you.

5                   MR. PARKER: May it please the Court.

6                   THE COURT: Mr. Parker.

7                   MR. PARKER: Counsel.

8                   Ladies and Gentlemen of the Jury, good  
9 morning.

10                  First of all, it's definitely my position  
11 that my clients and the people that testified on behalf  
12 of my clients did not, in fact, mislead anyone, and that  
13 we have been honest throughout this matter.

14                  I want to talk, first of all, a little  
15 bit about the patent. You learned it is what is known  
16 as a method or a process patent. Mr. Kamatani did not  
17 build anything, not even a prototype. And the film you  
18 saw -- and I don't know -- think back; I know you saw it  
19 a long time ago.

20                  But one of the examples they showed in  
21 that film was Thomas Edison and the lightbulb. Guess  
22 what? Thomas Edison built a lightbulb. And they showed  
23 you the telephone, and Alexander Graham Bell built the  
24 telephone.

25                  And even with the process, something as

1 complex as a computer operating system, we all know the  
2 story about Bill Gates in his garage writing source  
3 code, actually practicing the process, putting it into  
4 effect.

5 Mr. Kamatani -- Mr. Kamatani did nothing  
6 like that. He did not even try to explain to you what  
7 his patent does. He left that up to his expert, who I  
8 am going to tell you later didn't do a very good job.  
9 He can't even say whether or not it implicates the  
10 S-curve. In fact, he says: I don't even know what an  
11 S-curve is. I didn't know then, and I don't know now.  
12 And that's going to be important, too.

13 He's never written one line of source  
14 code to implement his patent, not one. And now any  
15 claim of infringement in this matter that relies solely  
16 on source code analysis, it is incumbent -- and this is  
17 so important -- it is incumbent that the Plaintiff,  
18 LaserDynamics, or its expert identify on an  
19 element-by-element basis for the asserted claim what  
20 source code of each accused instrumentality satisfies  
21 the software limitations for that element exactly.

22 You can't do it by comparing it to  
23 something else. You have to look at the accused  
24 product.

25 Now, why do I say exactly?

1                   I am using Dr. Howe's own words. You  
2 will recall, I said: So what you're saying is that in  
3 order for a QSI drive to infringe Claim 3 of the '981  
4 patent, each -- each optical disk must satisfy each  
5 element of the claim exactly, correct?

6                   Correct, yeah.

7                   And I say it's his word, even though I'm  
8 the one that spoke it, because it came out of something  
9 he had prepared for this case.

10                  They have not come close to carrying  
11 their burden, and they are the one with the burden.

12                  Dr. Howe admits, albeit reluctantly, that  
13 he did not do the very analysis he says is necessary,  
14 including preparing the accompanying flow chart for even  
15 one -- one accused drive. Not even one.

16                  Now, when Mr. Kamatani and his company  
17 had a claim against the company called Asus, they had  
18 the same expert, Dr. Howe. And he did the analysis, the  
19 very analysis that he says is what you have to do. He  
20 looked at the Asus drive, not somebody else's drive, and  
21 he went element by element, and he did it exactly. He  
22 told you that.

23                  And when they made a claim against a  
24 company called BenQ, Dr. Howe was their expert. And  
25 what did he do?

1                   Exactly what he says here he was supposed  
2 to do. But not in this case. And even he admits it,  
3 again reluctantly, that that would have been the better  
4 approach.

5                   I suggest it's the only approach. It's  
6 the only approach he's ever used in any other claim.

7 Why not here?

8                   Now, let's look at the accused drives.  
9 We started out with 20 of them, but now the E drives  
10 that you heard, or external drives, are no longer being  
11 accused, so they're out of the case. You don't need to  
12 worry about those.

13                   Let's look at the drives that Dr. Howe  
14 did a limited analysis on. Let's see the three limited  
15 analysis drives.

16                   Did analysis -- he did the limited  
17 analysis he described on three, but even there, he  
18 didn't look at all the code, and he didn't do a flow  
19 chart for any of them.

20                   Now, let's look at the one that he did  
21 the most analysis on. This is the top drive in terms of  
22 Dr. Howe doing anything to it, and that's the 087 drive.

23                   Now, LaserDynamics asserts you should  
24 find infringement of the QSI drives because Dr. Howe  
25 said so.

1                   But in the end, you need to look at the  
2 evidence that they have presented to see if Dr. Howe's  
3 conclusion can be justified or corroborated. Even if  
4 you were to take their best shot, and that's the limited  
5 analysis of the 087 drive, you'll find that  
6 LaserDynamics has failed to present enough evidence to  
7 show infringement for each and every element of the  
8 claim.

9                   You have nothing to take back to the jury  
10 room to review and determine infringement for each  
11 drive. No flow charts, no analysis of any QSI product.  
12 Dr. Howe didn't do it, and, therefore, neither can you.  
13 He admitted that he did not do a complete software or  
14 firmware comparison analysis for even the three drives,  
15 and that includes the 087.

16                   Now, for the 087, Dr. Howe initially even  
17 had the wrong number for the chipset in his expert  
18 report, and he described -- he caught it, and on the  
19 witness stand, he said: Oh, that's a typo. That's just  
20 a typo.

21                   Now, he agrees that the 087 uses a  
22 different chipset model number than the Asus drives.  
23 And how does he get around that?

24                   He says: Oh, those extra letters on the  
25 087 drive, I think they have to do with how it's

1 packaged.

2 And what did I ask him? I said: Well --  
3 remember, those are the ones that are made by MediaTek.  
4 I said: Dr. Howe, did you call anybody at MediaTek to  
5 determine that, to make sure your assumption that this  
6 different model number was meaningless?

7 No.

8 One phone call, one phone call to verify  
9 what he was saying. When Dr. Howe isn't interested in  
10 finding out whether his theories are right or wrong, he  
11 doesn't test them. Didn't test our products, didn't  
12 make one phone call, one phone call to MediaTek to make  
13 sure that he was right about that, because he didn't  
14 want to know the answer.

15 There's no other conclusion you can  
16 reach. He cannot say with respect to the 087 drive --  
17 and he admitted it -- that the source code is identical.  
18 And he can't explain the differences to you either. He  
19 admitted there's no flow chart for it. He chose a  
20 function -- remember, he said: Oh, look at my chart  
21 from my report; look at my chart.

22 He chose a function from the SDW087. He  
23 said they're similar, but he can't say they're exactly  
24 the same. Howe can say he thinks it's similar until  
25 he's blue in the face, but if you look at his own chart,

1 the call BDiskIDMeaData, paren/paren, doesn't sound the  
2 same to me, and it shouldn't sound the same to you, as  
3 BScan\_FE\_SBAD, paren/paren.

4 I mean, they aren't the same. They  
5 aren't the same letters; they're not in the same order.  
6 They don't have the same spacing. And he can't  
7 definitely say they're exactly the same without having  
8 completely analyzed the source code in a source code  
9 editor, which he didn't do for his report.

10 Then they identify in that same one --  
11 remember, the 087 is the best one they've got. In the  
12 087, they identify the function, bServoOn, paren/paren,  
13 to satisfy the quote: Settling the modulation of the  
14 servo mechanism element.

15 But when you go over to the side of the  
16 chart for the SDW087, they don't identify any function  
17 that's even claimed by him to be similar. So the  
18 element is completely missing.

19 Now, if you try to locate evidence for  
20 any other drive, you can't find anything, not even what  
21 he had for the 087. No comparison for the 243 or the  
22 085, both of which he said he did a limited analysis on.  
23 Thus, you won't even be able to find something that he  
24 claims is similar functions in those drives.

25 Next, let's go to the drives with the

1 Philips chipsets. Howe says that there are four  
2 functions. This is his testimony; this is his report.  
3 There are four functions that absolutely must be  
4 analyzed to compare these devices with the accused  
5 devices.

6 And then he says he only looked at one of  
7 them. He only looked at one of the four, because he  
8 didn't have the other three, but that didn't stop him  
9 from giving an opinion. He wants us to take it on faith  
10 that his speculation is enough to carry the day.

11 No way. There is no way for you to find  
12 infringement of those drives, because he himself has not  
13 done what he admits is critical to do at a minimum. At  
14 a minimum.

15 And finally, you go to the other MediaTek  
16 controller drives, and of those, he had shown you  
17 absolutely nothing, and he didn't even do a limited  
18 analysis. There's no way you can determine  
19 infringement.

20 And, remember, the burden is theirs.

21 He admits he did nothing. There's no  
22 evidence to show these drives infringe, because Howe  
23 didn't analyze them in any way, and he presented not  
24 even a bare chart like what he did with the 087, which  
25 was totally inadequate there. But he didn't even have

1 an inadequate chart for the rest of them.

2 But what he did say about the stuff he  
3 looked at is, he forms his opinion on the base -- on the  
4 basis that they're similar. That's his word. Remember?  
5 Good enough. Is that good enough?

6 It's not. Remember, I asked him: Is  
7 that the sort of analysis that you would use to support  
8 an academic paper that you submitted to a peer-reviewed  
9 journal?

10 And, of course, the honest answer to that  
11 is absolutely not, because I know it would be rejected  
12 out of hand, is what Dr. MacFarlane, who is an editor of  
13 those journals, said.

14 The honest answer would be to admit no.

15 But what did he say?

21                   It's simple, people. Similar means  
22 somewhat alike but not exactly the same. And to  
23 infringe, it must be, in Dr. Howe's words, exactly the  
24 same.

25 It's Plaintiff's job to do the analysis,

1 and for whatever reason, for purposes of his report in  
2 this case, Dr. Howe did not do it, even though he's  
3 always done it before. We can only speculate why.  
4 But it really doesn't matter, because it doesn't change  
5 the fact that he didn't do it. Plaintiff has not  
6 carried the burden. And while I think it takes more  
7 than a feather, they don't even have that.

8                   And I think Mr. Sankey shared that  
9 feather analogy with you at the beginning of the case,  
10 because he knew he didn't have much to show, based on  
11 what he knew Dr. Howe's testimony was going to be and  
12 based more on what he knew Dr. Howe had not done.

13                   They need a feather for every element,  
14 every element exactly, for every accused drive. They  
15 don't need a feather. They need a whole chicken. And  
16 they haven't shown it to you.

17                   And I suggest that once you determine  
18 that, that's as far as you need to go in your  
19 deliberations.

20                   Now, even though Dr. Howe did not do a  
21 detailed analysis of the QSI drives, he bases his  
22 infringement theory on the signal that results from the  
23 laser focus error. He testified about that and showed  
24 you a chart, which can be called the S-curve or the  
25 SBAD, which are kind of like two sides of the same coin.

1 However, even the S-curve doesn't infringe, as Professor  
2 MacFarlane explained. CDs and DVDs are different in two  
3 distinct ways.

4 First, CDs and DVDs have different pit  
5 sizes and different configurations.

6 Secondly, CDs and DVDs have different  
7 locations for the data layer. The '981 patent -- you'll  
8 have it with it. Read Claim 3. It relates to pits and  
9 pit configuration standards.

10 The S-curve technique, which Mr. Kamatani  
11 admits his patent doesn't teach, on the other hand, just  
12 relates to the depth of the data layer. Even if Dr.  
13 Howe were correct on the S-curve, it simply does not  
14 infringe. And that's what he showed and described as  
15 the activity of our drives. That's his opinion.

16 And remember, I asked him, I said: Well,  
17 why do you have to go any further and deal with any  
18 pits, because once you've determined the depth of the  
19 drive, you know whether it's a CD or a DVD?

20 And he danced around that. But you saw  
21 it. And the bottom line is, that's right, and that's  
22 all you need to do. And that does not implicate the  
23 patent.

24 Now, what about the operation of the  
25 patent?

1 Dr. MacFarlane pointed out a flaw that  
2 raises a question of enablement. In other words, could  
3 someone skilled in the art put the patent into practice  
4 without going to undue lengths to figure it out?

5                   This has to be -- this has to do with  
6 that loop in the middle of the patent diagram. And the  
7 fact that it could, in fact, be never ending. Dr. Howe  
8 admits there's no explanation in the patent itself to  
9 avoid this problem, no time limit, no counter limit,  
10 indeed no limit or instruction at all to avoid that  
11 problem. That's something Dr. Howe and Dr. MacFarlane  
12 agreed on.

13 Dr. Howe says: Oh, hey, it would be easy  
14 to figure out by one skilled in the art, which he says  
15 he is, and I think he is.

16 Why not show us?

24 So how was he supposed to teach one  
25 skilled in the art?

1                   Think about it. Another leap of faith by  
2 Dr. Howe, but not enough to get over Dr. MacFarlane's  
3 opinion, I suggest.

4                   Damages. I don't think you should get  
5 there, but I have to talk to you about them. Now, I  
6 think Mr. Sankey was implying don't worry about it,  
7 because somebody else is going to step up and pay.

8                   That's not true.

9                   Why in the world would Philips or Sony or  
10 NEC, the big companies that those demand letters were  
11 sent to, indemnity letters were sent to, which are  
12 always sent out in cases like this -- why in the world  
13 would they step up and pay?

14                   They've got a license.

15                   Now, on the damages issue, it's where the  
16 Plaintiff's case really leaves the realm of reality,  
17 logic, and good sense. I am going to talk about those  
18 16 negotiated licenses, because that's all we have.  
19 Those are all the licenses in the world that anybody  
20 ever entered into in a business-like negotiation with --  
21 with LaserDynamics. It hadn't happened since then.

22                   Why?

23                   Think about it. Because the market  
24 doesn't value the patent. Not one single running  
25 royalty, not one. Even through today, not one single

1 running royalty in any circumstance.

2                   And even when you add it in, as they did  
3 with the testimony of their damage calculation person,  
4 Mr. Davis -- even when you add in settlements that  
5 they've gotten out of other claims they've made, their  
6 average -- their average they received is \$388,000.  
7 They say don't look at the old licenses. What else can  
8 we look at?

9                   And then they say: Well, wait a minute.  
10 Those early ones, those were lump sum, because the  
11 technology was in its infancy.

12                   Think about that. If you were really  
13 buying technology that was in its infancy and you didn't  
14 think it might develop, wouldn't you rather do a running  
15 rate? Because that way, if it doesn't happen, you don't  
16 pay.

17                   I mean, that explanation is nonsense.  
18 The explanation is, they had a way of proceeding.  
19 LaserDynamics had a way of proceeding, and it was  
20 selling licenses. One time, one payment world-wide, you  
21 can use it.

22                   They had a game plan. Big companies they  
23 go \$200,000; smaller companies, they go somewhat less  
24 than that. And you saw that from the chart. That's the  
25 way, in fact, that it worked out over time.

1 And they did sell licenses to Philips,  
2 Sony, and Mitsubishi, companies that dwarf Quanta, all  
3 for fixed fees and all for \$250,000 or less.

4 And those companies, I suggest, pay minor  
5 tribute to make LaserDynamics go away. Quanta said no.  
6 Quanta said: We looked at it. We don't infringe, and  
7 we're not going to pay because we don't need it.

8 As for Quanta Computer, they assemble  
9 from parts made by others. And as Ms. Li said, they  
10 rely on the supplier to deal with license issues. And  
11 that's certainly reasonable, because if they had to pay  
12 a royalty on every piece they put in the computer,  
13 pretty soon there's no reason to make one.

14 You can't do it. You expect the people  
15 that supply you the finished parts to go into the  
16 assembled computer to deal with it. And that's  
17 reasonable.

18 Mr. Murtha's royalty opinion is so  
19 grossly inflated that it approaches a make-believe  
20 world. I think we're in a Star Trek episode. He  
21 suggests a royalty for the single patent, this one  
22 patent. And remember, all those licenses included all  
23 of Mr. Kamatani's patents. And when they want to build  
24 Mr. Kamatani up, they talk about he's got 15 patents.  
25 But when we point out that those licenses include all

1 the patents, they say: Oh, the rest of them don't mean  
2 anything.

3                   Which way is it? Which way is it?

4                   He suggests a royalty that's -- Mr.  
5 Murtha suggests a royalty on a par with the royalty that  
6 Quanta paid to the so-called 3C. Remember, those are  
7 companies -- those are Philips, Sony, and Pioneer.

8 And to the 6C, and that actually is nine companies,  
9 instead of six, but they have members like Hitachi,  
10 Toshiba, Sharp, and Warner Brothers. They are giants.

11 And those two patent portfolios each contain thousands  
12 of world-wide patents. And to suggest that you would  
13 pay a royalty for this one patent, the '981 patent  
14 that's a patent for a small part of the software related  
15 to a DVD drive, for which you've heard there are  
16 alternatives -- to suggest that you would pay for that  
17 on a par with what you pay for these huge patent  
18 portfolios is -- is insane.

19                   And you must realize that. You have to  
20 see that.

21                   And in terms of alternatives, you saw  
22 Rosen and Maeda up on the board, and you heard about the  
23 table of contents and the trial-and-error method from  
24 Dr. MacFarlane.

25                   I mean, why in the world for this one

1 little piece of technology in a part -- they want to  
2 talk about how important the part is, and we've never  
3 disputed that an optical disk drive is an important part  
4 of a laptop computer.

5 It's getting less important over time,  
6 but it's still important. It's convenient. You can  
7 show movies; you can play music. Eventually, it's going  
8 to be replaced by solid-state things like flash drives.  
9 But today, it has value, and it has utility. We've  
10 never disputed that.

11 But they want to talk about -- like  
12 Mr. Kamatani's patent, LaserDynamics patent, is the  
13 whole deal like they patented the disk drive. They  
14 patented one tiny piece of software.

15 THE COURT: Five minutes.

16 MR. PARKER: One tiny piece of software.

17 Thank you, Your Honor.

18 That didn't pass reasonableness. And

19 [REDACTED]

20 [REDACTED] **REDACTED BY ORDER OF THE COURT** [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Why in the world are they talking about  
25 that? Or why, if they are going to talk about it, don't

1 we talk about it in terms of \$7700 a patent.

2                   He applies his royalty -- Murtha -- to  
3 the finished product, and he doesn't give you one single  
4 example. And Mr. Reed said it doesn't happen in the  
5 marketplace. It just does not happen.

6                   Given Mr. Murtha's theory, it's a good  
7 thing these drives weren't put in a fleet of 747s.  
8 Imagine what the royalty would be.

9                   And he does put a 14-dollar royalty on  
10 the 28-dollar part. There's no other way to get around  
11 it. And if that were the case, Quanta Computer would  
12 simply buy drives from other manufacturers, and there  
13 would be more royalty at all.

14                  His theory would eliminate all of  
15 Quanta's profit, and they tried to get around that nine  
16 ways from Sunday, but they had in evidence Quanta's

17 [REDACTED]  
18 [REDACTED] **REDACTED BY ORDER OF THE COURT**

19                  And Mr. Reed said that they make actually  
20 less on the computers than they do on other things like  
21 the cell phones and the other electronic products they  
22 make. And that makes sense, because Quanta is the one  
23 in the squeeze.

24                  They have three large OEM competitors,  
25 and they are selling to huge companies like Apple, HP --

1 HP, Toshiba, Lenovo, which is IBM, the IBM computer.

2 That's where the profit is, with the big boys.

3 These guys are in the middle in the  
4 squeeze, so, yes, they have to do it on volume. And,

5 [REDACTED BY ORDER OF THE COURT]

6 And, yes, if you take Dr. Murtha -- Mr. Murtha's  
7 methodology, it would eliminate the profit.

8 And you will learn from the charts that  
9 that is important. That's something to take into  
10 consideration.

11 As to willfulness, when this case was  
12 first filed, every single drive in every Quanta Computer  
13 was named. Quanta didn't have a choice. Quanta  
14 couldn't change its conduct unless it closed its doors.

15 And you will learn that willfulness is  
16 more than just doing what you intend to do, that there  
17 are elements to it, that it has to do with recklessness.  
18 And there's nothing in the evidence in this case, I  
19 submit, that shows they were reckless.

20 Ms. Li testified that as an OEM  
21 manufacturer, they depended on their suppliers. There's  
22 nothing reckless about that.

23 Folks, send them packing. They're here  
24 trying to shoot the moon on the off chance they can  
25 convince a group of citizens -- you, the jury -- to

award a ridiculous sum of money to which there's absolutely no entitlement and for which they absolutely have no history in their own operations.

9 Now, the Plaintiff has got certain  
10 advantages in this case, because they have the burden of  
11 proof. They talk to you first in voir dire. They talk  
12 to you first in the opening statement, and they got a  
13 chance -- Mr. Sankey did -- to talk to you first today.  
14 And he may bring up things when he gets a chance to get  
15 up again that I don't have a chance to respond to. I  
16 ask you to use your common sense. Help me. Think about  
17 what a logical response would be.

18 And when you use your common sense and  
19 you look at all the evidence and, more importantly, the  
20 lack of evidence of any analysis of a single QSI accused  
21 drive, I believe your result will have to be that they  
22 take nothing.

23 And even if you do consider damages, the  
24 only reasonable damage calculation that had anything to  
25 do with business reality that was shown to you was shown

1 to you by Mr. Reed.

2 I don't think you should go there, but if  
3 you go anywhere, that's the only place I suggest you  
4 should or can go, based on the evidence you have.

5 On behalf of the Quanta team, I thank you  
6 for your time and attention and for what I know will be  
7 your fair, honest, and just consideration of the  
8 evidence in this case and a verdict for Quanta.

9 Thank you.

10 THE COURT: Thank you, Mr. Parker.

11 Mr. Sankey.

12 MR. SANKEY: Mr. Parker says don't make  
13 us pay for something that has no value. I guess he  
14 forgot that QSI filed a patent application in 2006  
15 trying to get a patent on technology that was almost  
16 identical.

17 In that patent application, he  
18 described -- or they described it, his own client, as  
19 essential to optical disk drives and essential to being  
20 able to sell computers.

21 Do you think they would have been able to  
22 sell \$2.6 billion into the United States without that  
23 technology?

24 They pick on Mr. Kamatani and say he's  
25 never made anything; he's never written any source code.

1 When Judge Ward reads you the instructions, see if it  
2 says anything in there about having to make any products  
3 or having to write any source code.

4 The law says the owner of a patent is  
5 entitled to damages for infringement. As I expected,  
6 they criticize Dr. Howe in his methodology.

7 Remember, his conclusion was unwavering.  
8 He didn't say, I think they infringe; he said, I know  
9 they infringe. I have no doubt. Not a single expert  
10 witness from their side to get on the stand to say, I  
11 disagree with Dr. Howe. I've analyzed these drives.  
12 They don't infringe.

13 The scales are overwhelmingly in favor of  
14 infringement. They put on no evidence -- they pick on  
15 Dr. Howe and his methodology only. They cannot pick on  
16 his conclusion, because it was unwavering.

17 Remember, that attorney argument from  
18 Mr. Parker is not evidence. If you didn't hear it from  
19 the stand, if you don't have an exhibit, it is not  
20 evidence to consider.

21 One of the things he said was that he  
22 did -- he never looked at Quanta's source code. Well,  
23 remember, he tried that with Dr. Howe, and Dr. Howe  
24 said, Now, wait a minute. Let's put Exhibit N from my  
25 report, N as in Nancy, up on there. See all along the

1 left side where I did refer to Quanta's source code, and  
2 I did match it up.

3 And though the source code doesn't have  
4 to be identical, though the part names don't have to be  
5 the same, they operate identically. They infringe.

6 An interesting comment -- again, they  
7 want to stick and talk to the '97, '98 license  
8 agreements. You're going to be asked about damages in  
9 2006, and we told you what changed.

10 This is an exhibit in evidence that  
11 you're entitled to look at, if you so choose, in the  
12 jury room. This was the TSR report.

13 Let me see if I can get that to focus a  
14 little bit.

15 The TSR report -- and the critical thing  
16 here is, you heard Mr. Parker say that the average of  
17 Mr. Kamatani's license agreements way back in '97 and  
18 '98 were \$388,000.

19 If you take a look, they don't even go  
20 back -- this is 2000 here -- they don't go back to '97  
21 and '98 when he was entering into these agreements for  
22 \$388,000.

23 In 2002, on this exhibit, they said that  
24 there were 400,000 optical disk drives made that year  
25 and sold in the United States. If you look at 2006, the

1 year that you're going to be asked to look at, 53  
2 million. That's 375 times what they were doing in 2000.  
3 Take that 388 average that he was doing licenses for and  
4 multiply it by 375 and see what you get. It's  
5 substantially more than we're asking for in this case  
6 and that the only testimony that you have as what would  
7 be reasonable in 2006.

8 You did hear about the E drives coming  
9 out of the case, and I'll tell you that there were four,  
10 and they are out of the case because the question you're  
11 going to be asked is damages against Quanta Computer  
12 that have to put drives into their computer before they  
13 ship them to the United States.

14 Judge Ward made some rulings pretrial  
15 that took those out of the case. We just took them out  
16 over the weekend, realizing that they were in there.  
17 But the key here is, Mr. Davis' damage model did not  
18 include those drives in it.

19 And if you want to take a look at Quanta  
20 Exhibit 1175, it was Davis Exhibit A6 to his report  
21 where he shows that those four E drives from 2006  
22 forward had zero in sales in the United States. They  
23 weren't part of his damage model. It does not reduce  
24 his opinion.

25 The comment was made that I'm trying to

1 suggest that Philips or Sony is going to pay their  
2 damages in this case. I'm not. I'm saying they're  
3 suggesting it by requesting indemnification.

4 Mr. Wang told you that last year alone,

5 [REDACTED] **REDACTED BY ORDER OF THE COURT** [REDACTED]

6 afford to pay their own damages in this case. They  
7 don't have to look to some other company.

8 Lawsuits are about responsibility. When  
9 a company won't take responsibility for its actions,  
10 jurors just like you have to do it for them.

11 Remember, Mr. Reed, when he talked about  
12 some of the royalty agreements he went through, he said  
13 that he had analyzed many other royalty agreements, and  
14 1 percent was reasonable; 2 percent was reasonable; 3  
15 percent was reasonable; 4 percent is reasonable.

16 We're asking for 2 percent. It fits  
17 within what he says was reasonable. If you believe that  
18 the number should be less or if you believe that the  
19 number should be more, you, as the jurors, make that  
20 decision. There's no evidence that less than 2 percent  
21 is reasonable.

22 When Judge Ward reads you the  
23 instructions here in a few minutes, he will state the  
24 law on this that says that the owner of a patent is  
25 entitled to an award of damages adequate to compensate

1 for the infringement, but in no event less than a  
2 reasonable royalty for the use that the defendant made  
3 of the invention.

16 Kamatani has a patent that covers this technology, which  
17 one of those choices do you think they would have taken?

20 Remember, one of their witnesses said to  
21 you that they will not stop infringing until the jury  
22 tells them to do so.

1 that system.

2 The bottom line is, Mr. Kamatani followed  
3 the rules. The Defendants did not.

4 On behalf of Mr. Kamatani, LaserDynamics,  
5 our trial team, we want to thank you for the attention  
6 that you gave this case, and we ask that you stay  
7 focused and continue to give it your attention until you  
8 render a true verdict that does justice.

9 Thank you.

10 THE COURT: Thank you, Mr. Sankey.

11 All right. Ladies and Gentlemen, you've  
12 heard the evidence that's been presented by the parties  
13 to this suit, and you've heard the argument of the  
14 respective attorneys in support of their position.

15 It is now my duty, under the law, to give  
16 you the charge in this case. It will be an oral charge  
17 and is given in an effort to assist you in your  
18 deliberation in deciding the issues which you must  
19 decide in order to reach a fair and impartial verdict in  
20 this case.

21 Perhaps this function of the Court is the  
22 most important one that the Court performs in the trial  
23 of any case, so I do ask that you pay close attention to  
24 my remarks.

25 You will remember that at the beginning

1 of this trial, I gave you some general instructions and  
2 definitions. Rather than repeat them, I ask you to  
3 recall them now in deciding the facts and issues which  
4 you are to decide.

5 As I instructed you at the beginning of  
6 the trial, you are the exclusive judges of the facts,  
7 the credibility of the evidence, and the weight to be  
8 given the testimony of the witnesses.

9 The Plaintiff's claims and Defendants'  
10 defenses may be proven by both direct and circumstantial  
11 evidence.

12 Now, you are to perform your duty without  
13 bias or prejudice to any party. The law does not permit  
14 jurors to be governed by sympathy or prejudice. A  
15 corporation and all other persons are equal before the  
16 law and must be treated as equals in a court of justice.

17 The Court and the parties expect that you  
18 will carefully and impartially consider all of the  
19 evidence, follow the law, as I will give it to you, and  
20 reach a just verdict.

21 You're instructed that all persons,  
22 including the Plaintiff and the Defendant in this case,  
23 stand equal before the law and are to be dealt with as  
24 equals in this court. The law is no respecter of  
25 persons.

1 First thing I'm going to do is briefly  
2 review the contentions of the parties and then give you  
3 some additional instructions and definitions that will  
4 guide you in deciding the facts that you must decide and  
5 resolve in this case.

With respect to the Plaintiff's claims and the Defendants' defenses, the Plaintiff, LaserDynamics, Inc., alleges that the Defendant, Quanta Computer, Inc. (Quanta) induces or contributorily infringes Claim 3 of its United States Patent No. 5,587,981 entitled Multi-Standard Optical Disk Reading Standard Having Distinctive Process.

13 LaserDynamics contends that Defendant  
14 infringes by acts of contributing to and inducing the  
15 use of the certain optical disk drives within the United  
16 States.

17 In addition, LaserDynamics alleges that  
18 Defendants' infringement is willful. LaserDynamics  
19 seeks damages in the form of a reasonable royalty to  
20 compensate it for the alleged infringement.

21 Quanta denies the Plaintiff's claims.

22 The Defendants contend that they do not  
23 contribute to or induce the infringement of the '981  
24 patent.

25 The Defendants also contend that Claim 3

1 of the '981 patent is invalid for failing to meet the  
2 enablement requirements of patentability.

3                   Additionally, the Defendants deny that  
4 there is any willful infringement in this case.

5                   LaserDynamics bears the burden of proof,  
6 by a preponderance of the evidence, that the Defendants  
7 infringe the asserted claim of the patent-in-suit.

8                   LaserDynamics also bears the burden of  
9 proof, by clear and convincing evidence, that the  
10 Defendants' alleged infringement was willful.

11                  Now, the Defendant bears the burden of  
12 proof, by clear and convincing evidence, that Claim 3 of  
13 the '981 patent is invalid.

14                  I will now give you some additional  
15 instructions and definitions that will help you in  
16 answering the questions that you will take into the jury  
17 room.

18                  First of all, with respect to claim  
19 interpretation, LaserDynamics contends that the  
20 Defendants committed patent infringement.

21                  To decide the questions of infringement,  
22 you must first understand what Claim 3 of the '981  
23 patent covers; that is, what it prevents anyone else  
24 from doing. This is called claim interpretation.

25                  Now, it is my duty, under the law, to

1 interpret what the words used in the patent claim mean.  
2 I have made my determination, and I will instruct you  
3 accordingly. You must apply the meaning I give the  
4 patent claim to your decisions on infringement and  
5 validity.

6 I will now instruct you how these words  
7 are to be construed and understood when deciding the  
8 issues of infringement and validity.

9 You've been provided with a copy of the  
10 patent-in-suit and a copy of these claim term  
11 definitions, and you certainly should refer to them and  
12 use them during your deliberations.

13 Optical disk means a disk-shaped storage  
14 device that is read by a laser or other form of light.

15 Encoded pit means a depression in the  
16 surface of the disk which represents data or  
17 information.

18 Processing an optical signal is construed  
19 to mean converting or manipulating an optical signal  
20 from one format into another.

21 Pit configuration standard of the optical  
22 disk is construed to mean a recognized arrangement of  
23 depressions formed in an optical disk.

24 The phrase collating the processed  
25 optical disk with an optical disk standard data, which

1 is stored in memory, means comparing the processed  
2 optical signal with an optical disk standard data stored  
3 on a memory.

6 The phrase settling modulation of  
7 servomechanism means dependent upon the optical disk  
8 standard data which corresponds with the processed  
9 optical signal is construed to mean establishing the  
10 regulation of the automatic feedback control system for  
11 mechanical motion dependent upon the recognized  
12 arrangement of depressions for an optical storage medium  
13 which corresponds to the processed optical signal.

14 The term servo means the motor part of  
15 the servomechanism controlled by the feedback circuit  
16 that produces the final mechanical output.

17 Modulate means regulate.

18 The phrase to modulate movement of a  
19 pickup means to regulate the position of an assembly  
20 that reads data from a disk.

24 Now, with respect to determining  
25 infringement, once the patent is issued, the owner of a

1 patent has a right to exclude others from making, using,  
2 offering to sell, or selling the patented invention  
3 throughout the United States for a term of 20 years.

9 Now, to determine whether there is an  
10 infringement, you must compare the allegedly infringing  
11 product with the scope of the patent claims as I have  
12 defined them for you.

13 Talk a little more about infringement.

14 LaserDynamics asserts that Defendant  
15 indirectly infringes Claim 3 of the '981 patent by  
16 contributing to or inducing direct infringement of the  
17 patent.

18 Now, in order to prove indirect  
19 infringement, LaserDynamics must first prove, by a  
20 preponderance of the evidence, direct infringement by a  
21 third party's use of the accused optical disk drives  
22 within the United States.

23 In order to directly infringe a patent  
24 claim, a product or method must include each and every  
25 limitation of the claim.

1 In determining whether the Defendant  
2 infringes LaserDynamics' asserted claim, you must  
3 determine for each accused product or method of use  
4 whether that product or its method of use contains each  
5 and every limitation recited in the asserted claim.

6 A claim limitation is present if it  
7 exists in the accused product or its method of use just  
8 as it is described in the claim language either as I  
9 have explained that language to you, or if I did not  
10 explain it, as it would be understood by one of skill in  
11 the art.

12 If such product or their methods of use  
13 omit even a single limitation, then you must find that  
14 the claim is not infringed.

15                   If you find that each and every  
16 limitation of a patent claim is found in the accused  
17 products or their methods of use, then the claim is  
18 infringed, even if the accused products or their methods  
19 of use may be more or less efficient or may include  
20 additional features or functions not found in the  
21 claims.

22 With respect to inducing patent  
23 infringement, LaserDynamics asserts that the Defendant  
24 has induced infringement of the '981 patent.

25 Now, to show inducement, the Plaintiff

1 must prove, by a preponderance of the evidence, that  
2 someone has directly infringed the patent. If there is  
3 no direct infringement by anyone, the Defendant has not  
4 induced infringement.

5                   If you find that someone has directly  
6 infringed the asserted claims of the '981 patent,  
7 Defendant has induced infringement if the Plaintiff  
8 proves, by a preponderance of the evidence, that the  
9 Defendant actively and knowingly aided and abetted that  
10 direct infringement.

11                  The Plaintiff must show that the  
12 Defendant actually intended to cause the acts that  
13 constituted direct infringement and that the Defendant  
14 knew or should have known that its actions would induce  
15 actual infringement.

16                  The Defendant also cannot be liable for  
17 inducing infringement if they had no reason to be aware  
18 of the existence of the patent.

19                  If you find that someone has directly  
20 infringed the asserted claim of the '981 patent and the  
21 Defendant knew or should have known that their actions  
22 would induce direct infringement, you may find that the  
23 Defendant induced another to infringe the Plaintiff's  
24 patent if they provided instructions and directions to  
25 perform the infringing act through labels, advertising,

1 or other sales methods.

2 You may also find that the Defendant  
3 induced infringement by supplying the components that  
4 are used in an infringing apparatus with the knowledge  
5 and the intent that their customer would directly  
6 infringe by using the components to make, use, or sell  
7 the patented invention.

8 With respect to contributory  
9 infringement, LaserDynamics also asserts that the  
10 Defendant is liable for contributory infringement of the  
11 '981 patent.

12 LaserDynamics has the burden to prove  
13 contributory infringement by a preponderance of the  
14 evidence. To establish contributory infringement by the  
15 Defendant, LaserDynamics must first show that someone  
16 directly infringed one of the asserted claims of the  
17 '981 patent.

18 However, the Plaintiff does not need to  
19 prove that the Defendant itself directly infringed. If  
20 there is no direct infringement by anyone, there can be  
21 no contributory infringement.

22 Now, if you find that someone has  
23 directly infringed the patent, then contributory  
24 infringement exists if the Plaintiff proves that:

25 Number (1) the Defendant sold, supplied

1 in the United States, or imported into the United  
2 States;

3 Number (2) a material component of the  
4 patented invention that is not a staple article of  
5 commerce capable of substantial non-infringing use;

6 And (3) with the knowledge that the  
7 component was especially made or adopted for use in  
8 an infringe -- in an infringing product.

9 Now, the term a staple article of  
10 commerce capable of substantial non-infringing use is  
11 something that has uses other than that -- than as a  
12 part or component of the patented product and that  
13 those other uses are not occasional, farfetched,  
14 impractical, experimental, or hypothetical.

15 With respect to willful infringement,  
16 LaserDynamics claims that the Defendant infringed its  
17 '981 patent willfully.

18 Although you must determine whether the  
19 Defendants' infringement was willful, this determination  
20 will not affect the amount of damages, if any, that you  
21 assess. The purpose of your determination is to assist  
22 the Court in making decisions that it will have to make.

23 Now, LaserDynamics must prove willfulness  
24 by clear and convincing evidence.

25 Clear and convincing evidence is a more

1 exacting standard than proof by a preponderance of the  
2 evidence, which only requires that the party's claim be  
3 more likely true than not true.

4                   Nevertheless, the clear and convincing  
5 standard is not as high as the burden of proof applied  
6 in a criminal case, which is beyond a reasonable doubt.

7                   To prove willful infringement,  
8 LaserDynamics must prove that it is highly probable that  
9 the Defendant acted with reckless disregard of Claim 3  
10 of LaserDynamics' '981 patent.

11                  Now, to demonstrate reckless disregard,  
12 LaserDynamics must satisfy a two-part test. The first  
13 concerns Defendants' conduct. The second concerns  
14 Defendants' state of mind.

15                  The first part of the test is objective.  
16 LaserDynamics must prove that the Defendant acted  
17 despite an objectively high likelihood that its actions  
18 constituted infringement of a patent.

19                  The state of mind of the Defendant is not  
20 relevant to this inquiry. You should focus on whether a  
21 reasonable person in the position of the Defendant,  
22 after learning of the patent, could have reasonably  
23 believed that it did not infringe or that the patent was  
24 invalid.

25                  If a reasonable person in the position of

1 the Defendant could not have held such belief, then you  
2 need to consider the second part of the test.

3 Now, the second part of the test looks to  
4 the Defendants' state of mind. If you find that the  
5 Defendant proceeded in the face of an unjustifiably high  
6 risk, then you must determine whether that risk was  
7 known or obvious to the Defendant.

8 LaserDynamics must prove that the  
9 Defendant actually knew or it was so obvious that the  
10 Defendant should have known that its actions constituted  
11 infringement of a valid patent.

12 Now, in deciding whether the Defendant  
13 satisfied the second part of the test, you should  
14 consider all of the facts surrounding the alleged  
15 infringement, including but not limited to the  
16 following:

17 (1) whether the Defendant, when it  
18 learned of the patent, investigated the scope of the  
19 patent and formed a good-faith belief that the patent  
20 was not infringed before the Defendant started or  
21 continued any possible infringing activity;

22 (2) whether the Defendant had a  
23 substantial defense to liability and reasonably believed  
24 that the defense would be successful, if litigated;

25 (3) whether the Defendant tried to cover

1 up its infringement;

2 (4) whether the Defendant copied --

3 copied the patented product;

4 And (5) whether the Defendant acted in a  
5 manner consistent with the standards of commerce of its  
6 industry.

7 Now, none of these factors is  
8 determinative, and the list of factors is not an  
9 exhaustive list of things you should consider.

10 Your determination of willfulness should  
11 incorporate the totality of the circumstances.

12 Now I want to talk to you about validity.

13 Quanta claims that LaserDynamics' '981  
14 patent is not valid. A patent issued by the United  
15 States Patent Office is presumed to be valid.

16 In order to rebut this presumption, the  
17 Defendant must establish, by clear and convincing  
18 evidence, that the Plaintiff's patent or any claim in  
19 the patent is not valid.

20 As I have instructed you earlier, clear  
21 and convincing evidence is a more exacting standard of  
22 proof than proof by preponderance of the evidence, which  
23 only requires that the party's claim be more likely true  
24 than not true.

25 Nevertheless, the clear and convincing

1 standard is not as high as the burden of proof applied  
2 in a criminal case, which is beyond a reasonable doubt.

3 The Defendant contends that the asserted  
4 claim is invalid because it fails to meet the enablement  
5 requirement necessary for patentability.

6 If you find, by clear and convincing  
7 evidence, that Claim 3 of the '981 patent is not  
8 enabled, then you should find the claim invalid and  
9 render a verdict for Quanta.

10 Now I want to give you some -- a little  
11 more understanding or law about enablement.

12 Quanta contends that the asserted claim  
13 is not enabled. The written description set forth in a  
14 patent must disclose sufficient information to enable  
15 one skilled in the field of the invention to make and  
16 use the claimed invention.

17 The full scope of the claimed invention  
18 must be enabled employ. This requirement is known as  
19 the enablement requirement. If a patent claim is not  
20 enabled, it is invalid.

21 In considering whether the written  
22 description of a patent satisfies the enablement  
23 requirement, you must keep in mind that patents are  
24 written for persons of skill in the field of the  
25 invention.

1                   Thus, a patent need not expressly state  
2 information that skilled persons would be likely to know  
3 or could obtain.

4                   The Defendant bears the burden of  
5 establishing lack of enablement by clear and convincing  
6 evidence.

7                   A written description is enabling so long  
8 as undue experimentation is not needed to make or use  
9 the invention. The fact that some experimentation may  
10 be required for a skilled person to make or use the  
11 claimed invention does not mean that a patent's written  
12 description fails to meet the enablement requirement.

13                  Factors that you may consider in  
14 determining whether the written description would  
15 require undue experimentation include:

16                  (1) the quantity of experimentation  
17 necessary;

18                  (2) the amount of direction or guidance  
19 disclosed in the patent;

20                  (3) the presence or absence of working  
21 experts in the patent;

22                  (4) the nature of the invention;

23                  (5) the state of the prior art;

24                  (6) the relative skill of those in the  
25 art;

1 (7) the predictability of the art;

2 And (8) the breadth of the claims.

3                   If you find that the Defendant has  
4 proved, by the clear and convincing standard, that the  
5 asserted patent claim is not enabled, then you must find  
6 the claim invalid and render a verdict for the  
7 Defendant.

14                   If you find that Claim 3 is infringed and  
15 not invalid, then you should consider the amount of  
16 money LaserDynamics should receive as damages.

17 LaserDynamics has the burden of proving  
18 by a preponderance of the evidence the amount of damage  
19 caused by the Defendants' conduct.

20 The owner of a patent is entitled an  
21 award of damages adequate to compensate for the  
22 infringement, but in no event less than a reasonable  
23 royalty for the use the Defendant made of the invention.

24 LaserDynamics is asking for damages in  
25 the amount of a reasonable royalty. Now, generally, a

1 reasonable royalty is defined by the patent laws as a  
2 reasonable amount that someone wanting to use the  
3 patented invention should expect to pay to the patent  
4 owner and the owner should expect to receive.

5                   A royalty is the amount of money a  
6 licensee pays to a patent owner for each article the  
7 licensee makes or uses, sells, or offers to sell under  
8 the patent or for the right to use the claimed method.

9                   A reasonable royalty is the amount of  
10 money that a willing patent owner and a willing  
11 prospective licensee would have agreed upon at the time  
12 of the infringement for a license to make, use, sell, or  
13 offer to sell the invention.

14                   In making your determination of the  
15 amount of a reasonable royalty, it is important that you  
16 focus on the time period when the infringer first  
17 infringed the patent and the facts that existed at that  
18 time.

19                   Your determination does not depend on the  
20 actual willful -- willingness of the parties of this  
21 lawsuit to engage in such negotiation. Your focus  
22 should be on what the parties' expectations would have  
23 been had they entered negotiations for royalties at the  
24 time of the infringing activity.

25                   It is the royalty that would have

1 resulted from an arm's-length negotiation between a  
2 willing licensor and a willing licensee, assuming that  
3 both parties believe the patent -- patent claim in  
4 question to be valid and infringed.

5 Now, in determining the reasonable  
6 royalty, you should consider all the facts known and  
7 available to the parties on August 31st, 2006, the date  
8 of the hypothetical negotiation.

9 Now, some of the kinds of factors that  
10 you may consider in making your determination are:

11 (1) whether the patent holder had an  
12 established royalty for the invention; in the absence of  
13 such a licensing history, any royalty arrangements that  
14 were generally used and recognized in the particular  
15 industry at that time;

16 (2) the nature of the commercial  
17 relationship between the patent owner and the licensee,  
18 such as whether they were competitors or whether the  
19 relationship was that of an inventor and a promotor;

20 (3) the established profitability of the  
21 patented product, its commercial success, and its  
22 popularity at the time;

23 (4) whether the patent owner had an  
24 established policy of granting licenses or retaining the  
25 patented invention as its exclusive right or whether the

1 patent holder had a policy of granting licenses under  
2 special conditions designed to preserve his monopoly;

3 (5) the size of the anticipated market  
4 for the invention at the time the infringement began;

5 (6) the duration of the patent and of the  
6 license, as well as the term and scope of the license,  
7 such as whether it is exclusive or nonexclusive or  
8 subject to territorial restrictions;

9 (7) the rates paid by the licensee for  
10 the use of the other patents comparable to  
11 LaserDynamics' patent;

12 (8) whether the licensee's sales of the  
13 patented invention promote sales of its other products  
14 and whether the invention generates sales to the  
15 inventor or his -- on his -- of his nonpatented items;

16 (9) the utility and advantages of the  
17 patent property over the old modes or devices, if any,  
18 that had been used for working out similar results;

19 (10) the extent to which the infringer  
20 used the invention and any evidence probative of the  
21 value of such use;

22 (11) the portion of the profits in the  
23 particular business that are customarily attributable to  
24 the use of the invention or analogous inventions;

25 (12) the portion of the profits that

1 should be credited to the invention as distinguished  
2 from nonpatented elements, the manufacturing process,  
3 business risks, or significant features or improvements  
4 added by the infringer;

5 (13) the opinion and testimony of  
6 qualified experts and of the patent holder;

7 (14) any other factors which, in your  
8 mind, would have increased or decreased the royalty the  
9 infringer would have been willing to pay and the patent  
10 owner would have been willing to accept, acting as  
11 normally prudent business people; that is, the amount  
12 which a prudent licensee, who desired, as a business  
13 proposition, to obtain a license to manufacture and sell  
14 a particular article embodying the patented invention,  
15 would have been willing to pay as a royalty and yet be  
16 able to make a reasonable profit and which would have  
17 been acceptable by a prudent patentee who was willing to  
18 grant a license.

19 You must not award LaserDynamics more  
20 damages than are adequate to compensate for the  
21 infringement nor shall you include any additional amount  
22 for the purpose of punishing the Defendant or setting an  
23 example.

24 You may not include damages that are  
25 speculative, damages that are only possible, or damages

1 that are based on guesswork.

2 Now, nothing that I have -- may have said  
3 or done during the course of this trial is intended to  
4 indicate any view of mine as to which party should or  
5 should not win this case.

6 As I have instructed you previously, the  
7 jury is the sole judge of the credibility of the  
8 testimony and the weight to be given the evidence.

9 Now, these instructions are given to you  
10 as a whole. You are not to single out one instruction  
11 alone as stating the law, but you must consider the  
12 instructions as a whole.

13 You have heard all the evidence in the  
14 case. You have heard the argument of counsel. The  
15 Court has given you the charge on the law in this case.

16 In just a few moments, you will retire to  
17 the jury room, select one of your members to act as  
18 foreperson, and begin performing the function for which  
19 you have been chosen, for which you have been empaneled,  
20 in accordance with the oath that you took as jurors.

21 You will remember that at the beginning  
22 of the trial and throughout this trial, the Court has  
23 admonished you not to discuss the case with each other  
24 until it was submitted to you.

25 Well, now is the time to begin your

1 discussion, and you certainly may express any opinion  
2 from the evidence that you have heard and use any  
3 reasonable means to persuade other members of the jury  
4 to your conviction and to your honest opinion.

5 You are to reach a verdict that speaks  
6 the truth and which does justice to all parties without  
7 favor, bias, or prejudice in any particular way, either  
8 for or against any party to this lawsuit.

9 In the course of your deliberations, do  
10 not hesitate to re-examine your own views and change  
11 your opinion, if convinced it is erroneous, but do not  
12 surrender your honest conviction as to the weight or  
13 effect of the evidence solely because of the opinion of  
14 your fellow jurors or for the mere purpose of reaching a  
15 verdict.

16 The verdict must represent the considered  
17 judgment of each juror. In order to return a verdict,  
18 it is necessary that each juror agree thereto. Your  
19 verdict must be unanimous.

20 As soon as you have reached a verdict,  
21 you will let this fact be known to the officer who will  
22 be assist -- waiting upon you, and he will report to the  
23 Court.

24 Mr. McAteer, are you staying with us?

25 COURT SECURITY OFFICER: Yes, sir.

1 THE COURT: All right. Mr. Pete McAteer.  
2 Your verdict will be in the form of questions which you  
3 are to answer. You will take these questions to the  
4 jury room. When you have decided and reached a  
5 unanimous verdict as to -- or unanimous agreement as to  
6 your verdict, you will have your foreperson fill in and  
7 sign and date the form and then advise the -- Mr.  
8 McAteer, your security officer, that you have reached a  
9 verdict.

10 Now, during your deliberations, you may  
11 have any exhibits which have been offered into evidence,  
12 and the Court will send them to you upon written  
13 request. If you desire further instructions, your  
14 foreperson may make this known in writing, and the Court  
15 will try to comply with your wishes.

16 All communications with the Court must be  
17 in writing, but at no time should you indicate to the  
18 Court or to anyone else how the jury is divided in  
19 answering any particular question.

Now, any notes that you have taken during this trial are only aids to your memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence.

25 A juror who is not taking notes should

1 rely on his or her independent recollection of the  
2 evidence and should not be unduly influenced by the  
3 notes of other jurors. Notes are not entitled to any  
4 greater weight than the recollection or impression of  
5 each juror concerning the testimony.

6 Mr. McAteer, if you'll come forward.

7 One other thing, Ladies and Gentlemen.  
8 You are now in charge of your breaks. You take --  
9 whenever you want to take a break, whenever you want to  
10 go to lunch.

11 I think you've figured out I go to lunch  
12 usually around 12:00 o'clock. So if you want to  
13 communicate with me, I probably won't be here between  
14 12:00 and about 12:45.

15 At this time, you may follow Mr. McAteer  
16 into the jury room.

17 (Jury out.)

18 THE COURT: Please be seated.

19 Anything from the Plaintiff?

20 MR. SANKEY: Nothing from the Plaintiff,  
21 Your Honor.

22 THE COURT: Anything from the Defendant?

23 MR. PARKER: Nothing, Your Honor.

24 THE COURT: Okay. All right. Now, one  
25 thing, I've got -- started some other hearing, and I

1 don't know what -- there is a scheduling conference this  
2 afternoon after 1:00 o'clock -- or around 1:00, but I  
3 would recommend to you that you keep available any of  
4 your -- on the computer and stay hooked up to show any  
5 demonstrative exhibits.

6 So you'll know, this Court's practice is,  
7 and it's been the practice -- I can -- personal  
8 experience, since 1970, since it's the first time it  
9 happened to me, was, the jury asked for a demonstrative  
10 exhibit. I don't send it back.

11 However, I will allow them to come into  
12 the courtroom, sit in the jury box, and view it until  
13 such time as they're ready -- they indicate they're --  
14 that happens a lot in these types of cases, so I just --  
15 for your -- I just wanted you to know that.

16 If there's nothing further, we'll be in  
17 recess pending the receipt of the verdict.

18 Thank you.

19 (Recess.)

20 (Jury out.)

21 COURT SECURITY OFFICER: All rise.

22 THE COURT: Please be seated.

23 All right. We've got a note that -- need  
24 QCI financial statements shown, need Exhibit No. 1175,  
25 need units of -- no -- number of units, parenthetical,

1 computer sold by QCI, 2006, 2008. Need easel board.

2 Need calculator.

3 Now, the Court can provide a calculator,  
4 and we'll get the easel. We may have to get a clean  
5 pad, Mr. McAteer. We'll use that easel, I guess, or is  
6 that one of the parties' easels?

7 We just need -- we'll get that in there.

8 Now, do the financial -- y'all know what  
9 exhibit that was?

10 MR. SANKEY: We will locate that.

11 THE COURT: See if y'all can agree on  
12 that. 1175, they don't say whether it's Plaintiff's or  
13 Defendants'.

14 MR. SANKEY: I believe that that was the  
15 one referenced in my closing.

16 THE COURT: That's what I thought.

17 MR. SANKEY: Defendants'.

18 MR. LUCK: Judge, I believe the last  
19 thing they're asking for is actually a demonstrative.

20 THE COURT: Well, that's what -- that's  
21 my recollection, and -- but I was trying to get  
22 everything down to what we could agree upon, and then  
23 we'll...

24 And this is signed by the Foreperson of  
25 the Jury, Julio Ramos, Juror No. 4.

1 Is 1175 a demonstrative?

2 MR. SANKEY: I believe it is a  
3 demonstrative, one of Mr. Davis' exhibits that he did  
4 his report on.

5 THE COURT: Let's see. Exhibit -- what  
6 is 1175, so I can see it? It's a demonstrative?

7 MR. SANKEY: Yes, sir. It's just one  
8 page. That's the one I mentioned, the top four show the  
9 E-drives and zero sales, and then it shows all the sales  
10 for all the drives in 2006/2007.

11 THE COURT: Okay. And wasn't there a  
12 demonstrative that showed the number of actual  
13 computers -- units?

14 MR. SANKEY: Yes, sir.

15 THE COURT: Did you get the calculator?

16 COURT SECURITY OFFICER: Yes, sir.

17 THE COURT: Take it in?

18 COURT SECURITY OFFICER: Yes, sir.

19 THE COURT: What about the exhibit with  
20 the financial statements?

21 MR. SANKEY: That's the last one that  
22 we're trying to locate.

23 MR. LUCK: Your Honor, was that a QSI  
24 financial statement?

25 THE COURT: QCI financial statements

1 shown. There was a Davis responsive exhibit that showed  
2 the number of units.

3 MR. SANKEY: That -- we have that.

4 THE COURT: Well, I'm hearing Mr. Parker  
5 say that this was one that was before that some things  
6 are taken out of the case. Y'all must have revised it  
7 from what was shown in here.

8 MR. RAMBIN: No, Your Honor.

9 MR. SANKEY: This one shows both the  
10 2 percent for QCI and the 6 percent for QSI, but it does  
11 show the units just related to QCI. They're broken out.

12 THE COURT: Well, I know, but Davis  
13 didn't testify to anything about QSI.

14 MR. SANKEY: Show -- that was not QSI.  
15 Those are direct and indirect sales by QCI.

16 THE COURT: Is there a dispute about  
17 whether this exhibit was shown or not?

18 I'm showing a QCI royalty base.

19 MR. PARKER: I believe that that was  
20 shown, Your Honor.

21 THE COURT: Well, I heard you saying it  
22 had things in it --

23 MR. PARKER: I thought it still had it.  
24 As I looked at it, Your Honor, I thought it still had  
25 some of the 6-percent calculations on it, which are out.

1 MR. RAMBIN: Your Honor, I believe  
2 Mr. Davis' testimony was there was about \$15,000 total  
3 worth of royalty stand-alone or replacement QCI drives  
4 that were sold. And he and Mr. Murtha both -- Mr. Reed  
5 both just glossed over it, because it was a relatively  
6 trivial figure.

7 THE COURT: Well, you -- there's no  
8 dispute that this exhibit was shown, QCI royalty base?

9 MR. PARKER: It was, yes, sir.

10 THE COURT: Okay. Any dispute about  
11 this 275?

12 MR. PARKER: No, sir.

13 THE COURT: I mean, 1175? Excuse me.

14 MR. PARKER: It was shown.

15 THE COURT: All right. Now, where are we  
16 on the --

17 MR. SANKEY: This one we have -- we're  
18 going to get together everything, but because it appears  
19 that they want the financial statement shown, there were  
20 basically four. There were the three that I showed  
21 where QCI says we control QSI, and there was one that  
22 Mr. Davis had as a demonstrative that showed their --  
23 their financial statement summaries.

24 | THE COURT: Well, I don't --

25 MR. SANKEY: That was shown, also.

1                   THE COURT: Shown means to me it was a  
2 demonstrative exhibit.

3                   Do you disagree with that,

4                   Mr. Parker?

5                   MR. PARKER: Correct.

6                   THE COURT: Somebody showed a financial  
7 statement showing what the margins of profit were. This  
8 was shown to the jury in Mr. Davis' representation,  
9 correct?

10                  MR. SANKEY: Correct.

11                  MR. LUCK: Yes, sir, it was.

12                  MR. PARKER: Yes, sir.

13                  THE COURT: I believe what they're asking  
14 for, then, is all demonstrative exhibits.

15                  MR. SANKEY: Correct.

16                  THE COURT: I mean, these three, at  
17 least.

18                  MR. SANKEY: Yes, sir.

19                  THE COURT: Mr. Parker, you got anything  
20 you think is responsive?

21                  MR. PARKER: No, sir.

22                  THE COURT: You agree these are three  
23 that describe --

24                  MR. PARKER: I believe that's what  
25 they're asking for.

1 THE COURT: Okay. All right. Let's  
2 bring them in. Let's have a seat.

3                   Here, who's going to -- let's see. Why  
4 don't you, Mr. Smith, put those on the -- turn on the  
5 ELMO.

10 MR. SMITH: Okay.

11 THE COURT: The first one is financial  
12 statements as shown. That's D9, I believe. And that  
13 one you had -- yeah -- yes, that's the first one. And  
14 then the -- that one you showed is last. There's three.

15 MR. SMITH: Yes, sir.

16 THE COURT: Those three. Okay.

17 MR. SANKEY: Your Honor, if I could  
18 inquire, would the Court publish those for the jury?  
19 Because I can tell you from here, you can't read any of  
20 the numbers.

21 THE COURT: That's what -- these were  
22 shown. No, I don't ordinarily publish them.

23 You mean pass them around?

24 MR. SANKEY: Yes, sir.

25 THE COURT: What's the Defendants'

1 position?

2 MR. PARKER: I don't have an objection to  
3 that, Your Honor.

4 THE COURT: Okay. Well, do you agree  
5 they're not -- can't -- I just -- I'm not going to allow  
6 them to go back in the jury room.

7 MR. PARKER: No, sir, I would object to  
8 that.

9 THE COURT: Yeah. Let's bring them in.

10 I'll tell them they're so small I can't  
11 see them. We'll pass them around; is that alright?

12 MR. PARKER: Yes, sir.

13 THE COURT: Is that okay with the  
14 Plaintiff?

15 MR. SANKEY: Yes, sir.

16 (Jury in.)

17 THE COURT: Everyone please be seated.

18 Now, Mr. Ramos, I received your note,  
19 and, of course, I sent into you an easel and a  
20 calculator.

21 There are three exhibits that we believe  
22 that you have requested. All three were demonstrative  
23 exhibits and were not actually introduced into evidence,  
24 even though they were placed on the screen. Therefore,  
25 I -- as a matter of law, I don't -- it wasn't actually

1 admitted into evidence, even though you saw the figures.

2 Now then, we have examined those among  
3 ourselves and are in agreement the print is so small  
4 that you can't see those when we put them up on the  
5 screen. So what we're going to do, there are three --  
6 Mr. Smith, my law clerk, is going to hand them to  
7 Mr. McAteer.

8 You may take them, look at them, make  
9 whatever notes you wish to make, but we can't -- no one  
10 is going to be able to talk to you about it, and -- and  
11 there shouldn't be any conversation among yourselves  
12 here.

13 Just make whatever notes you wish to  
14 make, and let me know when you're through. And then  
15 I'll let you return to the jury room without those  
16 exhibits. Take your time -- whatever time you need.  
17 With this writing, we might need to get our glasses.

18 (Pause in the proceedings.)

19 THE COURT: All right. Ladies and  
20 Gentlemen, I'm going to ask you to return and continue  
21 deliberations in accordance with all of my instructions.

22 Mr. Ramos, I acknowledge I've received  
23 another note. I'll see if I can comply with your  
24 request.

25 If y'all will return to the jury room at

1 this time. Continue to deliberate according to all the  
2 instructions.

3 (Jury out.)

4 THE COURT: Be seated, please.

5 While they were looking at those  
6 demonstrative exhibits, I received another note from the  
7 Foreperson: Can we see Plaintiff's exhibit showing  
8 number of DVD, slash, CD shown from 2000 to 2008,  
9 parenthetical, Sankey in his closing argument, signed  
10 by -- that was the report?

11 MR. SANKEY: TSR report.

12 THE COURT: Okay. You agree with that,  
13 Mr. Parker?

14 MR. PARKER: I do, but, again, that's a  
15 demonstrative.

16 THE COURT: No, that report was  
17 introduced into evidence, wasn't it?

18 MR. PARKER: Was it?

19 THE COURT: The entire report was.

20 MR. LUCK: I don't believe it was  
21 introduced into evidence.

22 MR. PARKER: I don't think so.

23 MR. LUCK: Demonstrative only, Your  
24 Honor.

25 THE COURT: Okay. I thought it was --

1 MR. PARKER: No, sir.

2 THE COURT: Well, I'm just wrong.

3 MR. PARKER: In fact, it was -- there was  
4 a ruling on that by Judge Everingham at pretrial that  
5 the expert could rely on it, but it could not come in as  
6 primary evidence.

7 THE COURT: All right. Well, we'll bring  
8 them back in and see this demonstrative.

9 Do y'all think this is something they can  
10 see on the screen?

11 MR. SANKEY: I don't think so. The 400  
12 on the left and 53 million for 2006, and it's hard to  
13 read holding it where Your Honor is holding it.

14 THE COURT: I'll agree with that. I'll  
15 allow it to be published to the jury.

16 Any disagreement with that?

17 MR. PARKER: No, sir.

18 THE COURT: Bring them back in.

19 (Jury in.)

20 THE COURT: Everyone please be seated.

21 I received your request, Mr. Ramos.

22 Likewise, the exhibit you requested was a  
23 demonstrative exhibit, and because of the size of the  
24 print, I'm going to allow this to be published to the  
25 jury because it wouldn't do any good to put it on the

1 ELMO.

2 Mr. McAteer.

3 As previously in our other one, you can  
4 look at it as long as you feel like you need to.

5 (Pause in the proceedings.)

6 THE COURT: All right. Ladies and  
7 Gentlemen, at this time, I'd request you return to the  
8 jury room and continue deliberating in accordance with  
9 all my previous instructions.

10 (Jury out.)

11 THE COURT: Anything from the Plaintiff  
12 at this time?

13 MR. SANKEY: Nothing from the Plaintiff.

14 THE COURT: Defendant?

15 MR. PARKER: Nothing, Your Honor.

16 THE COURT: I suggest that we -- these  
17 copies of the exhibits that have been published to the  
18 jury, I'm going to -- Ms. Dupree, I'm going to -- if you  
19 need to make another copy for your files, that's fine,  
20 but I'm going to ask that they be marked, for the  
21 record, just so the record will be complete, as Court's  
22 Exhibit 1 through 4 that were shown to the jury in open  
23 court during deliberations.

24 Any objection to that from the Plaintiff?

25 MR. SANKEY: No objection.

1 MR. PARKER: No objection.

2 THE COURT: Okay. Thank you. We're in  
3 recess.

4 COURT SECURITY OFFICER: All rise.

5 (Recess.)

6 (Jury out.)

7 COURT SECURITY OFFICER: All rise.

8 THE COURT: Please be seated. All right.

9 This is Jury Question No. 3, I believe,  
10 Jury Note No. 3.

11 Question: Are we deciding the dollar for  
12 a one-time lump sum or a lump -- one-time lump sum that  
13 will set precedent for the future -- for future sales?

14 Signed by the foreman.

15 Here's the response the Court proposed.  
16 If you have an objection, I want to hear it.

17 Please answer the question in accordance  
18 with all of my prior instructions based upon all of the  
19 evidence in the case. If you desire a repeat of any  
20 instructions on the question of damages, you may request  
21 that of the Court.

22 Objection from the plaintiff?

23 MR. SANKEY: No objection.

24 THE COURT: From the defendant?

25 MR. PARKER: No objection.

1 THE COURT: All right. We're in recess  
2 pending further communication.

3 COURT SECURITY OFFICER: All rise.

4 (Recess.)

5 (Jury in.)

6 COURT SECURITY OFFICER: All rise.

7 THE COURT: Please be seated.

8 Mr. Ramos, have we reached a verdict?

9 JURY FOREPERSON: Yes.

10 THE COURT: All right. If you'd hand it  
11 to Mr. McAteer.

12 (Complies.)

13 THE COURT: All right. Ladies and  
14 Gentlemen, I'm going to read in sort of shorthand  
15 fashion the answers to the questions. Listen carefully  
16 because I'll ask, so that we'll have a record here in  
17 Court, that you confirmed your verdict as being  
18 unanimous.

19 Question No. 1 is answered yes to all  
20 products that were accused.

Question No. 2 was answered no.

22 Question No. 3 is answered yes.

25 If this represents your verdict, please

1 stand at this time.

2 (Jurors comply.)

3 THE COURT: All right. Thank you.

4 Please be seated.

5 For the record, show that it was  
6 unanimous, that all jurors stood confirming their  
7 verdict.

8 Ladies and Gentlemen, at this time, we're  
9 going to be releasing you with a sincere thanks of the  
10 Court for doing your -- what I consider a very high  
11 calling of ordinary citizens to preserve, protect, and  
12 defend the constitution, particularly the 7th Amendment.

13 I have told you throughout this trial not  
14 to talk to anybody about this. Now, then, I am  
15 reversing that instruction and telling you to talk to  
16 anybody you want to, but it's up to you whether you talk  
17 to anybody or not.

18 The rules in this district, at least  
19 since 1968 when I started practicing here, have been  
20 that the lawyers are prohibited from contacting you  
21 concerning your verdict or talking to you. However, let  
22 me assure you, if you see one after you leave the  
23 courtroom and you have any desire to say anything to one  
24 of them, if you indicate, I got something to say, well,  
25 they'll be glad to listen to you. That's what I'm

1 trying to emphasize to you, it's strictly up to you.

2 But -- so with that final instruction, I  
3 know it's -- we came back over the weekend. It was our  
4 July 4th weekend celebrating the birth of our country,  
5 so y'all sort of worked as ordinary citizens before and  
6 after that weekend, and I appreciate your service. The  
7 people that are involved appreciate your service, but  
8 I'm going to dismiss you at this time, again, with the  
9 sincere thanks of the Court.

10 You may leave the Court. Thank you.

11 (Jury out.)

12 THE COURT: Please be seated.

13 Anything from the Plaintiff?

14 MR. SANKEY: Nothing further from the  
15 Plaintiff.

16 THE COURT: All right. Anything from the  
17 Defendant?

18 MR. PARKER: Nothing at this time, Your  
19 Honor.

20 THE COURT: All right. All right. Court  
21 stands in recess. Thank you very much.

22 COURT SECURITY OFFICER: All rise

23 | (Court adjourned.)

24 | \* \* \* \*

1  
2 CERTIFICATION  
3

4 I HEREBY CERTIFY that the foregoing is a  
5 true and correct transcript from the stenographic notes  
6 of the proceedings in the above-entitled matter to the  
7 best of my ability.  
8  
9

10  
11 /s/ \_\_\_\_\_  
12 SUSAN SIMMONS, CSR  
13 Official Court Reporter  
14 State of Texas No.: 267  
15 Expiration Date: 12/31/10  
16  
17

\_\_\_\_\_ Date

18 /s/ \_\_\_\_\_  
19 JUDITH WERLINGER, CSR  
20 Deputy Official Court Reporter  
21 State of Texas No.: 731  
22 Expiration Date: 12/31/10  
23  
24

\_\_\_\_\_ Date

25 /s/ \_\_\_\_\_  
26 SHELLY HOLMES  
27 Deputy Official Court Reporter  
28 State of Texas No.: 7804  
29 Expiration Date: 12/31/10  
30  
31

\_\_\_\_\_ Date